

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TERRY LEE CHILDS,)	
)	
Plaintiff,)	
vs.)	NO. CIV-12-0322-HE
)	
GEO CORP., <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff, a state prisoner appearing *pro se*, filed this action pursuant to 42 U.S.C. §1983 alleging various violations of his constitutional rights. The case was dismissed due to plaintiff's failure to pay the filing fee, but reversed and remanded by the Tenth Circuit on appeal. It was then referred for further proceedings to Magistrate Judge Erwin, who recommends that it be dismissed again for failure to effect service on defendants and submit a notice of change of address.

On May 13, 2013, the magistrate judge directed defendants to file a special report. He also directed plaintiff to complete and return to the court clerk within twenty days the necessary service papers so that service could be effected on defendants. Doc. #19. Plaintiff was advised that the failure to serve defendants and file proof of service within the 120 day period set by Fed.R.Civ.P. 4(m) could result in the dismissal of the action. On January 14, 2014, when plaintiff still had not served defendants, the magistrate judge granted him another extension, until February 4, 2014, to file proof of service or show good cause why defendants had not been served. Doc. #21. Plaintiff was told that without a showing of service or good

cause, his complaint might be dismissed.

On March 4, 2014, recognizing that “the circumstances in this case are unusual and may have frustrated Plaintiff in his efforts to effect service,” that plaintiff’s claims might be barred by the statute of limitations if the action were dismissed, and that plaintiff had been moved to a different correctional facility, the magistrate judge sua sponte granted plaintiff a permissive forty-five day extension of time to serve all defendants and notify the court clerk of his change of address. Doc. #22. Plaintiff was once again advised that noncompliance with the order could result in the action’s dismissal without prejudice.

When plaintiff did not comply with his latest order, the magistrate judge issued a Report and Recommendation on May 30, 2014, recommending the dismissal of plaintiff’s claims without prejudice. Doc. #23. That order was mailed to plaintiff at the last address he had provided the court and also to the address the magistrate judge located through a search of the Oklahoma Department of Corrections’

website. See Doc. #22, p. 4. It was returned as undeliverable on June 11, 2014. Doc. #24.¹


Having reviewed the procedural history of this case and the magistrate judge’s orders, the court concurs with Magistrate Judge Erwin that, based on plaintiff’s failure to effect service and provide the court with his most recent address, as required by LCvR5.4(a), the action should be dismissed.

Accordingly, this action is dismissed without prejudice.

¹Plaintiff did not object to the Report and Recommendation, but obviously could not, as he did not receive it. However, the nonreceipt was due to plaintiff’s own failure to update his address.

IT IS SO ORDERED.

Dated this 18th day of June, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE